

2009 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1351

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1351

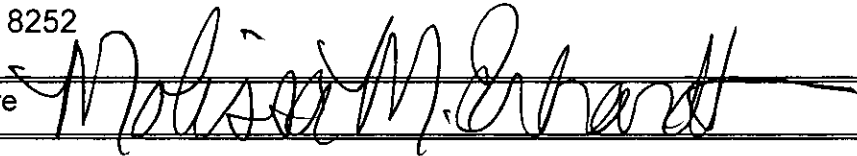
House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 01/30/2009

Recorder Job Number: 8252

Committee Clerk Signature



Minutes:

Chairman Grande: Open the hearing on HB 1351. Clerk read the title.

Rep. Todd Porter, District 34, Mandan: This bill comes in front of you to do a couple of things. About ten years ago we worked on changing a little bit for the (can't understand) for the municipal court judges, district court judges, into the statute on being able to possess a firearm at a public gathering. What this bill does is a couple things. It expands the list of professionals available to have a concealed weapon at a public gathering. But it also removes the requirement that they have a concealed weapons permit. It does that for a very specific reason. On the bottom of Page 1, into the second page, it already requires these individuals to maintain the same firearms proficiency as a licensed law enforcement officer through the State Board that governs law enforcement. So in order to use this expanded privilege, the retired police officer would have an option. They could maintain their concealed weapons permit and be restricted to where they carry the weapon or do an agreement with their prior employer they

could not maintain their concealed weapons permit if they didn't want to but maintain their standard of firearms proficiency the same as they did while they were employed at that Law Enforcement Agency. It really falls back to the Chief or the Sheriff or the Head of the Agency in order to make the determination of whether or not they want to allow an individual to carry a concealed weapons permit under this portion of law. The other example that I could give you is if you have a staff member of the Attorney General's office that works specifically with the undercover units and they are out working and their out on search warrants, their out on all sorts of scenarios, technically they could end up in a situation where they go to a place that they are not supposed to be carrying a weapon, they may have a concealed weapons permit and want to have a weapon with them. Under this bill, the Attorney General could say, Yes, you are allowed to go through the same training as the BCI officers and carry a concealed weapon because of the job that you do for the State of ND. Now you may have someone else who just sits in the office, that just does legal work on opinions, and they say "no" you can't so it really falls back to the agency head to make that determination of who fits the bill of taking the firearms proficiency and who does not. With that Madam Chair I would be happy to answer any questions?

Chairman Grande: Any prosecutor can now carry? I know prosecutors that necessarily don't have any Law Enforcement background.

Rep. Porter: It expands the list to include prosecutors, but it still will fall back to, if that is a City Prosecutor, a relationship with the Chief of Police or the Sheriff in that locality to do that thing required by the Post Board to maintain that level of certification. So, just because they are on the list does not mean that they can use this provision. It is available to them. What it says is if they have a sponsoring Police Chief or Sheriff or the Attorney General that they could be authorized to go through the training and have a permit under this provision. If they do not then they would be limited and restricted to the current ND concealed carry laws. It does not open anything up, they still have to go through the training and they still have to be authorized by the department that does that post-board training currently.

Chairman Grande: So would that person then be able to say to the prosecutor after they have gone through the sponsorship, they have gone through the training, and today you can carry and the next day this is not a situation you need to be, so there would be someone to regulate that?

Rep. Porter: They certainly could have that in their local policy as far as governing when and where.

Rep. Winrich: I realize that this is not a change in the law but I am curious, it seems fairly restrictive as to who can carry this. But then it says "any retired police officer", apparently whether or not they are fulfilling one of these official

functions as an officer of the court. Can you enlighten us on what the thinking behind that is?

Rep. Porter: There are departments out there currently that still issue official ID to their retired officers and in today's world of Homeland Security issues could still potentially call them back as a retired police officer to help in a mass casualty, disaster type situation. Those officers that I specifically know of carry an official ID, a badge that says "Retired" on it, they do participate in the annual training, but they are still required to carry a concealed weapons permit because they are not considered active Law Enforcement. What this does is, it allows that

Chief of Police, to say "yes" we are more than happy to allow you to have this license to carry a concealed weapon.

Chairman Grande: Any other questions? Anyone else in favor of 1351?
Opposition to 1351?

Pat Heinert, Sheriff, Burleigh County Sheriff's Department: Want to narrow the scope of my testimony to a specific line that is added in reference to the court officers being allowed to carry and narrow that scope down to actually looking in the court room itself and the court house itself because I am also responsible for security for our county courthouse. A couple points I want to make on that is if you picture any of the court officers coming through the front door of the Burleigh County Courthouse, which is the only entrance into our facility, and we have our

magnetometer set up there, we have our metal detectors set up there and we have a line of jurors coming in with a prosecutor, a defense attorney, or the bailiff and they are carrying. They have guns that are concealed into the courthouse. This is going to cause a tremendous headache for us, in that my court security officers are not even allowed to be armed because that is what our commission decided along with our judges several years ago and we have not been able to change that yet. The other issue I want you to picture is while sitting in the courtroom, the defense attorneys are usually the ones who have the bad guys sitting next to them, and I bring someone from our jail over and we are having a jury trial and I know that defense attorney is armed, whether it be on him or in his briefcase, I have another issue now. I have an inmate who is free to roam in that area with that defense attorney and has access to a weapon in the courtroom. My last issue is, high risk court cases, we had the Moe Gibbs trial, that got moved to Burleigh County last year, that was an extremely high risk court case. In that as part of our tactic for security that actual two officers who were closest to Mr. Gibbs were not armed, they were armed with tasers, they were armed with other (can't understand) but they were not actually physically armed with a handgun for security purposes.

Rep. Meier: Situation's like in the case of Moe Gibbs, isn't that individual in handcuffs?

Pat Heinert: When we had Mr. Gibbs the judge ordered us to have him uncuffed, when he got behind the defense stand. That is atypical. The reason for that is the judges have an extreme concern that the jury sitting across the room from him to have any kind of situation to cause a mistrial. We did have him leg ironed, but we had to make sure his pants were long enough to cover them up, then we had to hang a curtain in front of the table and stuff like that, so the jury couldn't see that, but his hands were still free.

Rep. Nathe: As I read this, this would not mandate you to have your people armed. Does this force you in your interpretation to have your people armed?

Pat Heinert: The only portion I am talking about is the new underlined portion where it talks about the court officers having the availability? That is the only portion I am concerned with.

Chairman Grande: Define court house?

Pat Heinert: I just asked one of our Asst. States Attorney's, Cynthia, who is really a court officer of the court? The Judge, any attorney who comes into the room to speak, clerk of court, the recorder, the bailiffs.

Rep. Nathe: But it would still be your decision as to whether or arm them or not? Correct? If this were to pass you could still make that call?

Pat Heinert: I don't think so. Once they have permission to carry, if they want to carry in the court room they could. The way I read it.

Vice Chairman Randy Boehning: On Line 19, a private security personnel while on duty can carry into the court house? Are you allowing private security personnel, while on duty, to carry in the court room? That is existing law.

Pat Heinert: Is that new law? Then I must be violating the law, because "No, we are not". We are not allowing anybody but Law Enforcement to carry in our courthouse.

Vice Chairman Randy Boehning: Underneath this, you probably have to talk to the prosecutors the judges already can carry, maybe it is going to have to be an understanding, I am sure we don't want everyone armed like they were 100 years ago in the old bar room fights. I am thinking it could be some policy stated in there, I don't think it should be a problem, I am sure that the attorneys would be more than willing to check theirs at the door.

Pat Heinert: My understanding, from talking with our State's Attorney's office, is that we do not have the right to set up the policy after this law is passed. We cannot supercede the law.

Chairman Grande: Vice Chairman Randy Boehning if you start at Subsection 2 there, it says this section does not apply to Law Enforcement, and then everything listed under there all the way to the word duty in Line 19, they do not get to. Then it says in addition to, then the people past there get to.

Vice Chairman Randy Boehning: Okay. I think it misread that Madam Chair.

Rep. Wolf: Were you asked to bring this on behalf of somebody or are you just kind of doing this on your own? Was there a problem, is that why this bill is before us today?

Rep. Porter: Yes, I was asked and yes there is a problem. Specifically it deals with the staff members of the Attorney General's office and also with the retired law enforcement officers that are currently complying with the Post Board standards that are restrictive and they need to carry a second concealed weapons permit when they reach retirement.

I do appreciate the concerns of Sheriff Heinert, I certainly would not have any problem inside of this bill restricting individuals where the county court house situations do exist. A couple of points: 1. The only reason that any of those individuals that Sheriff Heinert mentioned could have a concealed permit in the first place is because he allowed them to. There is no way they can have it in the first place without him saying "yes, you may." Come to our training site and train with our officers and have this concealed weapons permit.

2. No problem allowing the Sheriff or the administrator of the court house to set the policy that would restrict based on their list of individuals who they leave out, who carries past their security point. Again I want to remind the committee that the only way a person can do it under this law is if the Sheriff or Chief of Police say they can, because they are the only ones who control the training

requirements that are necessary to need this because it is post-board certified. It is not just going to the gun range and shooting. They have to go to authorized rigorous training that every licensed Law Enforcement officer has to go through.

Rep. Amerman: You probably read these things a lot better than I do, but I am reading this and we have been talking about in the court room and so on and so forth. Kind of the way I am reading this, you are adding a prosecutor , other officer of the court, staff member, and the rest are exempt from Subsection 1, it does not say anything about on duty, so are we allowing them to go to athletic or sporting events, school functions, churches, because I don't see anything where it is just restricted to the court room?

Rep. Porter: Yes, they would be able to carry anyplace where a current licensed law enforcement officer is can carry a concealed weapon, which is sitting right here, I am guessing there is at least two in this room.

Chairman Grande: Anyone else against HB 1351? Neutral? Hearing closed.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. Committee Work One 1351

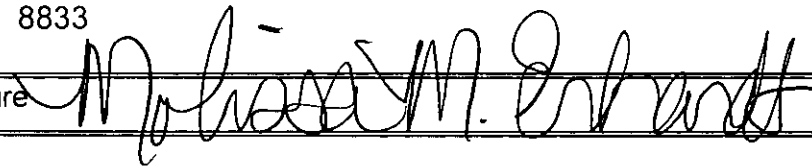
House Government and Veterans Affairs Committee

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Hearing Date: 02/05/2009

Recorder Job Number: 8833

Committee Clerk Signature



Minutes:

COMMITTEE WORK ONE:

Chairman Grande: We will take up HB 1351. We have amendments and these amendments deal with what the Sheriff's concerns were. On Page 2, Line 3 after the period we will insert "notwithstanding this Subsection, this section applies to an individual if the Sheriff of the county prohibits a firearm at the building in which the District Court is held because the Sheriff has determined that prohibition is necessary for security and the security is approved by the presiding Judge. An individual otherwise exempt under this Subsection must be informed of the prohibition and given the opportunity to comply with the prohibition before the individual is in violation of this section." What this does is if you are in the courtroom, no matter what is going on, if the Judge says no weapons it doesn't matter if you had the right to conceal or not, the weapon is gone. I want to give that prosecutor or whoever the option to remove that weapon from the facilities and then proceed in court without detriment to the case, that is what the last line

is. The other one is that it gives us that barrier that the Sheriff had come in and was concerned about. The Sheriff brought up the Moe Gibbs case and in that circumstance it probably wasn't prudent to have a weapon in the courtroom. But on many of the other cases it probably would be ok to do that. This will give him that discretion that in a high profile difficult situation he can close down that courthouse and the Judge would then have that authority to proceed and make sure it happens. This will give the people the opportunity that have all of their post-board training and have the ability to carry a concealed weapon okay to be coming through there.

Rep. Schneider: Do we think that there is a Sheriff in the State that wouldn't adopt this? I can't imagine a Sheriff saying "Yeah go ahead and bring guns in our courthouse?"

Chairman Grande: But he has to say is necessary for the security and the security is approved. I think he has to prove there is a reason for it.

Rep. Schneider: That just kind of goes without saying.

Chairman Grande: The few times I have gone into a courtroom, not for any big time stuff so I can't imagine it being a dangerous situation.

Rep. Dahl: What was the rationale behind putting prosecutor or other officer of the court? Could we just keep in the language about the Attorney General's office?

Chairman Grande: With other officer of the court, if one of our BCI agents is in there to testify and he has the right to conceal or carry he may want to have his side arm.

Rep. Winrich: BCI agents are law enforcement officers and this first sentence says it does not apply to law enforcement officers and members of the armed forces and so on. My thinking on the bill is along the same lines as Rep. Dahl, I think that there was a sensible argument made for members of the Attorney General's staff that in certain situations they do need to act very much like Law Enforcement officers and work with BCI agents and so on. But I didn't see any really good reason why we had to have a prosecutor or other officer of the court in there. I would prefer to strike that.

Rep. Wolf: Remember when I questioned Rep. Porter about the bill, the only thing he specifically said was people from the Attorney General's office had asked him to put the bill in. He didn't say anything about prosecutor's or other officers of the court, but he did specifically state those from the Attorney General's office.

Chairman Grande: I think before I strike out that language I would like to have a conversation with Rep. Porter and then show him this language one more time and see if we need to have this in there or not after we remove that language. If we remove that language we may not need the amendment.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. Committee Work Two HB 1351

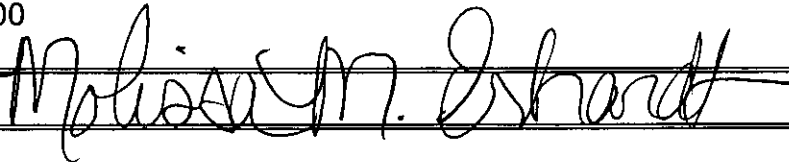
House Government and Veterans Affairs Committee

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Hearing Date: 02/12/2009

Recorder Job Number: 9400

Committee Clerk Signature



Minutes:

Committee Work Two:

Chairman Grande: We will take up HB 1351.

Rep. Dahl: With respect to this bill, I talked with Rep. Porter and he does not have any heartburn about taking out the language where it says a prosecutor or other officer of the court. Move to amend the bill to strike that language.

Rep. Wolf: 2nd.

Rep. Dahl: We won't need if we do this.

Rep. Kasper: So the amendment will take out all of the underlined lines?

Rep. Dahl: No. Just to strike a prosecutor or other officer of the court.

Vice Chairman Randy Boehning: We are going to let the staff members of the Attorney General's office carry.

Chairman Grande: The staff members of the Office of the Attorney General just means that it is the BCI officer that is already the post-board training, concealed weapons, he has all that training, he is there on an official business as testimony.

Rep. Winrich: Where does it say that?

Chairman Grande: That has to do with what the courtroom is for. The Sheriff and the Judge seem to be happy with that.

Rep. Wolf: Because nobody from the Attorney General's office came down to talk about this bill and Rep. Porter talked about having people from that office asking him to put this bill in, we visited with the Attorney General about it and what he is going to do, right now it says from his secretary through everyone, and he feels comfortable with it, he is going to be developing specific training for his staff to go through to be able to do this. He is going to control this is what he said.

Vice Chairman Randy Boehning: Lines 20 and 21.

Chairman Grande: Those in favor of the amendments? Consent: I. All in favor.

Vice Chairman Randy Boehning: Motion for Do Pass As Amended.

Rep. Kasper: 2nd.

Chairman Grande: Discussion? Seeing none, call the roll.

Clerk Erhardt: Roll Call. Yes: 12. No: 1. Absent: 0. Carrier: Rep. Wolf.

VR
2/13/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1351

Page 1, line 20, remove "a prosecutor or"

Page 1, line 21, remove "other officer of the court,"

Renumber accordingly

2/12/09

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 135

House **Government and Veterans Affairs**

Committee

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Legislative Council Amendment Number

Action Taken

Motion Made By

Seconded By

[illegible]

Total (Yes) 12 No

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1351: Government and Veterans Affairs Committee (Rep. Grande, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1351 was placed on
the Sixth order on the calendar.

Page 1, line 20, remove "a prosecutor or"

Page 1, line 21, remove "other officer of the court,"

Renumber accordingly

2009 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1351

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No.1351

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 03/12/09

Recorder Job Number: 10867

Committee Clerk Signature

Kate Olive

Minutes:

Todd Porter: District 34 of Mandan. This bill does 2 things: allows a staff member of the Attorney General's office to carry a concealed weapon, under the same provisions as a law enforcement officer and it allows retired law enforcement officer the same privilege. From the Attorney General's standpoint, the assistant Attorney Generals that are working with the drug units and BPD but not licensed law enforcement, with the law enforcement side would be afforded with the permission of their boss, the ability to carry a concealed weapon. With that permission also comes the same training standards and requirements that go with a licensed police officer. In order for that provision to affect a staff member of the Attorney General's office

- 1) Attorney General would have to approve it.
- 2) That person would have to go through training and re certification and requires their boss to sign off on this.

BPD have to have a concealed weapons permit.

Senator Nelson: Who is getting deleted? The only thing that I see is drug unit/AG being added

Senator Dever: Remove that they need a concealed weapon

Todd Porter: Yes

Senator Dever: I think that we made the provision for retired law enforcement officers in 2001 or 2003.

Todd Porter: Made an attempt. Not this would maintain standards and boss have to sign off on training. Have official identification from that agency.

Senator Horne: This staff member from the AG's office, this would restrict them to the DEU?

Todd Porter: That was my example that would be at the call of the Attorney General.

There was no further testimony, on either side, for HB1351. A motion was made for a do pass by Senator Nelson with a second by Senator Horne, who also carried the bill to the floor.

Date: 3-13-09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1351

Senate Government and Veteran's Affairs Committee

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Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Nelson Seconded By Horne

Representatives	Yes	No	Representatives	Yes	No
Dick Dever	1		Dwight Cook	1	
Dave Oehlke	1		Carolyn Nelson	1	
Robert M. Horne	1				

Total Yes 5 No 0

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Horne Carried

REPORT OF STANDING COMMITTEE (410)
March 13, 2009 1:08 p.m.

Module No: SR-46-4832
Carrier: Horne
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1351, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1351 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1351

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1351

Page 2, line 3, after the period insert "Notwithstanding this subsection, this section applies to an individual if the sheriff of the county prohibits a firearm at the building in which district court is held because the sheriff has determined the prohibition is necessary for security and the security is approved by the presiding judge. An individual otherwise exempt under this subsection must be informed of the prohibition and given an opportunity to comply with the prohibition before that individual is in violation of this section."

Renumber accordingly